



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

October 30, 1996

The Honorable Royce West  
Chair, Senate Interim Committee on Juvenile  
Driving while Intoxicated Laws  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 96-118

Re: Whether a county may charge a fee to a defendant who is subject to article 17.441, Code of Criminal Procedure, for the purpose of verifying the installation of and monitoring a motor vehicle interlock device (ID# 38752)

Dear Senator West:

You have requested our opinion as to whether a county may impose a fee to verify the installation of and to monitor a motor vehicle interlock device authorized by article 17.441 of the Code of Criminal Procedure.

Article 17.441, enacted in 1995, provides:

(a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Sections 49.04-49.06,<sup>1</sup> Penal Code, or an offense under Section 49.07 or 49.08<sup>2</sup> of that code:

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

(b) The magistrate may not require the installation of the device if the magistrate finds that to require the device would not be in the best interest of justice.

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<sup>1</sup>Section 49.04 creates the offense of driving a motor vehicle while intoxicated; section 49.05 prohibits a person from operating an aircraft while intoxicated; section 49.06 criminalizes the operation of a watercraft while the operator is intoxicated.

<sup>2</sup>Section 49.07 makes it an offense to cause "serious bodily injury" to another while intoxicated and operating an aircraft, watercraft, or motor vehicle; section 49.08 makes it an offense to cause the death of another while intoxicated and operating an aircraft, watercraft, or motor vehicle.

(c) If the defendant is required to have the device installed, the magistrate shall require that the defendant have the device installed on the appropriate motor vehicle, at the defendant's expense, before the 30th day after the date the defendant is released on bond.

(d) The magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. [Footnotes added.]

Subsection (c) explicitly requires that the interlock device be *installed* on the vehicle "at the defendant's expense." Subsection (d), however, which permits the magistrate to "designate an appropriate agency to verify the installation of the device and to monitor the device," contains no indication that such verification and monitoring may be conducted at the defendant's expense. Neither does any other statute of which we have been apprised authorize a county to pass along these verification and monitoring costs to the defendant.

It is well established that a county is a political entity that possesses only those powers "specifically conferred upon them" by constitution or statutes." *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948). As a result, a county is prohibited from imposing any fees other than those explicitly authorized. *Nueces County v. Currington*, 162 S.W.2d 687, 688 (Tex. 1942); *McCalla v. Rockdale*, 246 S.W. 654, 655 (Tex. 1922). See Attorney General Opinions JM-345 (1985) (county may not impose fee for parking of motor vehicle on beach), H-990 (1977) (Harris County may not charge tolls on operation of Lynchburg Ferry); Letter Opinion Nos. 94-066 (1994) (county may not impose fee on funeral homes for transporting bodies to office of medical examiner), 92-20 (1992) (county may not charge fees for storing bodies at county morgue).

Accordingly, we conclude that a county may not charge a fee to a defendant who is subject to article 17.441 of the Code of Criminal Procedure, for the purpose of verifying the installation of and monitoring a motor vehicle interlock device.

### S U M M A R Y

A county may not charge a fee to a defendant who is subject to article 17.441 of the Code of Criminal Procedure, for the purpose of verifying the installation of and monitoring a motor vehicle interlock device.

Very truly yours,



Rick Gilpin  
Deputy Chief  
Opinion Committee